

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 08-24

January 28, 2008

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Settlement of Unfair Labor Practice Cases Pending before the Board

With the end of former Chairman Battista's term on December 16, 2007 and the adjournment of the first session of the 110th Congress on January 3, 2008 the recess appointments of Members Walsh and Kirsanow expired and the Board was reduced to two sitting members. In light of these events and the uncertain prospects for the prompt appointment or confirmation of additional Board members, there is a real potential for significant delays in processing disputed cases before the Board upon exceptions to administrative law judges decisions. As we all know, with delays in the litigation process for unfair labor practice cases comes continued uncertainty for the parties as to their legal rights and obligations. Charging parties and others who have suffered as a result of unfair labor practice conduct are denied the remedial relief to which the law entitles them and respondents who have monetary liabilities face increasing costs as a result of the accrual of interest.

On January 1, 2008, there were 155 unfair labor practice cases pending before the Board on exceptions to administrative law judge decisions. The Board has determined that it has the authority to issue decisions by unanimous vote of the two sitting Members. It will do so in cases upon which the Members can agree. Even these cases may experience delays, however, because of the realities of having only a two Member Board. In light of these realities, the Regions should intensify their efforts to settle cases post-Administrative Law Judge decision, where that decision results in a recommended remedy. While it has long been the view of the Office of the General Counsel that settlements best promote the effective and efficient administration of the Act, when the parties face the uncertainties and prejudices of long delays as they do under present circumstances, the potential benefits of settlement are increased. Parties to such cases may see the advantages of a prompt settlement if these circumstances are made plain to them.

While certain disputes will not be amenable to settlement efforts, the Act will be best served if every effort is directed to the voluntary resolution of post-Administrative Law Judges decisions. To facilitate settlement discussions, Regions, where appropriate, should be prepared to present to respondents backpay figures based upon

a continuing investigation of compliance issues.¹ Regions may also seek to invoke the ADR process in appropriate cases.

Regions are under outstanding instructions to consolidate compliance issues with the litigation of substantive complaint allegations in an initial administrative law judge proceeding in appropriate cases. The reason for this policy is to avoid the delays that often accompany traditional, bifurcated complaint and compliance proceedings. While this procedure is not appropriate for many types of cases, there are situations where it is encouraged, see *Consolidating Compliance Issues with ULP Complaints – Expediting Casehandling in “Default Cases,”* OM Memorandum 07-59(CH), dated May 17, 2007. Where it appears that Board consideration of exceptions to an administrative law judge’s decision recommending monetary remedies will be long delayed and compliance issues are amendable to litigation prior to court enforcement of a Board order, all parties are well served by prompt litigation of those issues before an administrative law judge, perhaps allowing for joint consideration by the Board or the reviewing court.

Regions also should be alert to the need for 10(j) relief, following a favorable ALJD, in situations where a threat of remedial failure is presented and should submit those cases to the Injunction Litigation Branch.

/s/
R. A. S.

cc: NLRBU
Release to Public

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¹ See Casehandling Manual Section Three, Compliance Proceedings, Section 10508.8.